(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
CHHATTISGARH

Criminal Appeal .No. 140 /2001

APPELLANTS
(In Jail) :

1. Chamal Singh, S/o. Bhadu Ram, Aged 30 years,
2. Sukhansai , S/o. Neharsai, Aged .35 years,
3. Rai Singh, S/o. Bhaduram , Aged .32 years
4. Rohna, S/o. Shamalsai, Aged .20 years
5. Rodhiram , S/o.Sukra , Aged. 45 years
6. Buturam @ Ashok, S/o. Injoresai , Aged. 23 years
7. Mansingh , S/o. Bhokulram .Aged .25 years
8. Balsingh , S/o.Dokri, Aged . 35 years

All are Resident of Village : Gahana Jharia ,Barkhuria, Police Station : Lailunga, District : Raigarh , Chhattisgarh.

Versus

Filed on 3-2-2001 by Shri ... Advocate
R. to AR

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Respondent : The state of Chhattisgarh, through the District Magistrate Raigarh.

MEMORANDUM OF CRIMINAL APPEAL UNDER SECTION 374 OF Cr. P.C.

CONVICTION	**SENTENCE**
U/section 302 r/w sec 149 of I. P.C :	**Life imprisonment**
U/ section 325 r/w sec 149 of I. P.C :	**R. I. for 1 year**
U/section 148 r/w sec 149 of I. P.C :	**R.I. for 6 months**

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XI-HC-78

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मामला क्रमांक Cr.R.140..... **सन् 2001**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON. SHRI L.C. BHADOO AND HON. SHRI DHIRENDRA MISHRA,JJ

Criminal Appeal No. 140/2001

Appellant	**Chamal Singh and others**
	Vs
Respondent	**State of Chhattisgarh**

Mr. S.R.J. Jaiswal, learned counsel for the appellants.
Mr. G.D. Vaswani, learned Additional Public Prosecutor for the State/respondent.

ORAL JUDGMENT
(01.12.2006)

Per L.C. Bhadoo, J

This appeal is directed against the judgment of conviction and order of sentence dated 29th January 2001 passed by First Additional Sessions Judge, Raigarh in S.T.No. 59/2000 whereby the learned Additional Sessions Judge after holding accused/appellants guilty for commission of the offence under Sections 302/149, 325/149 , 148/149 of the Indian Penal Code, sentenced each of them to undergo imprisonment for life, one year rigorous imprisonment and six months

P.T.O.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

rigorous imprisonment, respectively. All the sentences were directed to run concurrently.

2. Case of the prosecution in brief is that Basant (PW-1) lodged Merg intimation (Ex.P/1) in the Police Station – Lailunga on 4.12.1999 at about 4.35 p.m. to the effect that he is the resident of village Barkhuriya, today i.e. 4.12.1999 in the morning he was at his residence, Baisakhu Sarthi came to his house and informed that your father and Amarsai have been assaulted across the road, on which he went to the spot and saw that his father was lying dead on the road whereas at a distance of 15-20 paces, Amarsai was lying in an injured condition across the road and he was talking. When he enquired from him (Amarsai), he disclosed that yesterday i.e. 3.12.1999 at about 3.00-4.00 p.m. some quarrel took place between Bal Singh, Rai Singh, Chamal Singh, Ronha, father of Sukhan and them, they slapped Bal Singh twice, when he and your father were going towards Khamhar through Sardega by Khardega road, at that time accused Rai Singh, Chamal Singh, Sukhan, Ronha, Maan Singh, Rodhi, Bal Singh, Buturam came from behind and killed your father Chamra Sai by

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आदेश पत्रक (पूर्वानुबद्ध)

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assaulting him with lathi and club saying that you have become goon of the village. When Amarsai intervened they also assaulted him and Chamal Sai has succumbed to the injuries whereas Amarsai is lying there in an injured condition. Receiving this report Station House Officer registered the First Information Report (Ex.P/2) for the commission of offence under Sections 302, 147, 148 of the IPC, left for the scene of occurrence and prepared the inquest report (Ex.P/7) of the body of Chamra Sai after giving notices (Ex.P/8) to the Panchas. Bloodstained and plain soil was taken into possession from the place of occurrence under Ex.P/9. Site plan (Ex.P/10) was prepared. The body of deceased Chamar Sai was sent for postmortem examination to Primary Health Centre, Lailunga where Dr. R.S. Upadhdyaya (PW-13) conducted postmortem and prepared the postmortem report (Ex.P/12). The doctor opined that cause of death was due to shock and hemorrhage as a result of rupture of spleen and homicidal in nature. Amarsai was medically examined in Community Health Centre, Lailunga and his injury report Ex.P/13 was prepared. X-ray of the injuries was taken and his tibia bone was found fractured. During investigation from Bal Singh a club under Ex.P/16, from Man

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Singh a club under Ex.P/17, from Buturam a club under Ex.P/18, from Rodhi a club under Ex.P/19, from Ronha a club under Ex.P/20, from Rai Singh a club under Ex.P/21, from Sukhan Sai a club under Ex.P/22 and from Chamal Singh a club under Ex.P/23 was taken into possession, in pursuance of their memorandums from Ex.P/24 to Ex.P/31, respectively. After usual investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Gharghoda who in turn committed the case to the Sessions Judge, Raigarh from where learned Additional Sessions Judge received the case on transfer for trial.

3. Prosecution in order to establish the charges against the accused persons examined 13 witnesses in all. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the incriminating material appearing against them in the prosecution evidence and pleaded innocence and false implication in the crime. The accused persons examined DW-1 Sudarshan and DW-2 Shaniram, as defence witnesses.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

4. Learned Additional Sessions Judge after hearing counsel for the respective parties convicted and sentenced the accused as mentioned above.

5. We have heard Mr. S.R.J. Jaiswal, counsel appearing on behalf of the accused/appellants and Mr. G.D. Vaswani, Additional Public Prosecutor for the State/respondent.

6. Mr. S.R.J. Jaiswal, counsel for the accused/appellants has not disputed the homicidal death of Chamra Sai. Apart from that from the evidence of injured witness PW-2 Amarsai and PW-13 Dr. R.S. Upadhdyaya who conducted postmortem on the body of deceased Chamra, it is established that death of Chamra Sai was homicidal in nature.

7. As far as involvement of the accused/appellants in crime in question is concerned, PW-2 Amarsai who is an injured eyewitness, has stated that on 13.12.1999 some quarrel took place between Chamra Sai and the accused persons, he and Chamra Sai were going to Khamhar, when they were in between Sardega and Barkhoriya the accused persons met them, they assaulted Chamra with lathi. When

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

he tried to intervene, they also assaulted him as a result of which his leg was fractured. He has further stated that Rai Singh assaulted him with lathi on his leg, as a result of which his leg was fractured. As per the medical evidence of Dr. R.S. Upadhdyaya (PW-13) the corresponding injuries were found on the body of Chamra and also on the body of Amarsai. On the basis of memorandums of the accused persons clubs were recovered from them. In the cross-examination of this witness, the defence has not been able to elicit any circumstance which makes the evidence of this witness untrustworthy or unreliable. As Amarsai is of the same village, therefore, the accused persons were well known to him and as such about the identity of the accused persons he has not been cross-examined. Thus involvement of the accused persons in the crime in question is established.

8. Learned counsel for the accused/appellants submits that from the evidence available on record it is evident that both the injured and the deceased were in drunken condition, on the day of incident Chamra who was a man of criminal character quarreled with the accused persons, he used to create trouble in the village, therefore,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

just to teach a lesson to him when the villagers got fed up with Chamra, they assaulted him with lathi and there was no intention on the part of the accused to cause his death. He further submits that most of the injures were inflicted on the legs i.e. non-vital part of the body and in the process somehow a lathi blow landed on the stomach, as a result of which spleen was ruptured and Chamra died on the spot. Even the Dr. R.S. Upadhdyaya who conducted postmortem on the body of deceased has not given a cogent and definite opinion that the injures present on the body of deceased were sufficient in the ordinary course of nature to cause his death.

9. On the other hand, Mr. G.D.Vasvani, Additional Public Prosecutor for the State/respondent supported the impugned judgment of the trial Court.

10. In order to appreciate the arguments advanced by learned counsel for the accused/appellants we have perused the evidence of Amarsai (PW-2) who has stated that on the date of incident quarrel took place between the accused persons and Chamra, when Chamra and himself were going to Khamhar, the accused persons assaulted

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

them with lathi, as a result of which Chamra died on the spot and he sustained injury of fracture. In the cross-examination he has admitted that there was some dispute between Chamra and the people of the vicinity. However, he has denied the suggestion that Chamra used to harass the vicinity people. He has admitted that on the date of incident deceased and he had consumed liquor.

It is true that the accused persons attacked the deceased with lathi, most of the injuries were on non-vital part of the body except one which was on the stomach, as a result of which spleen was ruptured. There was already a quarrel between the accused and the deceased on the day of incident, therefore, in these circumstances, looking to the manner in which the accused persons assaulted the deceased, it cannot be inferred that they assaulted the deceased with an intention to cause his death. However, the manner in which they assaulted the deceased is suggestive of the fact that they had the knowledge that by attacking the deceased in such a manner with lathi, they may likely to cause his death. Therefore, knowledge of the accused persons can be inferred from the facts and evidence available on record.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

11. For the foregoing reasons, conviction of accused persons under Section 302 of the IPC cannot be sustained and the offence against them does not travel beyond Section 304-II of the IPC.

12. In the result, the appeal partly succeeds. Conviction of the accused persons under Sections 302/149 of the Indian Penal Code and sentence imposed thereon, are set aside. Instead thereof, each of the accused persons is convicted under Section 304-II of the IPC and sentenced to undergo imprisonment for seven years. However, their conviction and sentence under Sections 325/149 and 148/149 are maintained. All the sentences to run concurrently. It is pointed out that the accused persons are in detention since 5.12.1999, which has not been disputed by learned counsel for the State. It is directed that since the accused persons are going to complete the sentence on 4.12.2006, they be set at liberty forthwith on 4.12.2006 if not required in any other case.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

P.T.O.